

FEDERAL COMMUNICATIONS COMMISSION  
Washington, D. C. 20554  
APR 12 2001

OFFICE OF  
MANAGING DIRECTOR

James L. Oyster  
Attorney at Law  
108 Oyster Lane  
Castleton, Virginia 22716-9720

86-285

RE: Request for Waiver (Section 9, Regulatory Fee), V.I. Stereo Communications Corp.,  
WVIS (FM), Chistiansted, St. Croix, U.S.V.I., Fee Control Number 00000CDMC-99-  
009.

Dear Mr. Oyster:

We reviewed your request dated August 12, 1999, on behalf of V.I. Stereo Communications Corp., to supplement an earlier petition for waiver, which was dismissed by the Commission on July 13, 1999. For the reasons stated below, we deny your request for waiver of the fiscal year (FY) 1998 regulatory fee of \$1,250. To avoid penalties, interest and other administrative charges, this fee is due within 30 days of the date of this letter.

Title 47, United States Code, §159(d) grants the Commission authority to waive the fee "in any specific instance for good cause shown, where such action would promote the public interest." The authority to waive fees is narrowly defined (*See Conference Report, H.R. Rep. No. 453, 99<sup>th</sup> Cong., 1<sup>st</sup> Sess. 423*), and it rests upon an established standard with two elements: whether an extraordinary or compelling reason has been demonstrated; and would the waiver of the fee override the public interest to collect the fee. The Commission's implementing rules are at 47 CFR §1.1166.

When we considered the merits of your petition, we found that it did not establish good cause for the waiver and it did not demonstrate that such waiver would promote the public interest. Each regulatee must properly document a request for waiver that will be evaluated against the Commission's standard.

Petitioners seeking a waiver, deferral or reduction of a regulatory fee based on financial hardship may submit any relevant information in support of their request. We will review the supporting documents and base our ruling upon information submitted and any additional information available in our records. If petitioner presents a compelling case of financial hardship, no payment of the regulatory fee will be due. If the supporting materials do not present sufficient evidence of hardship, we will deny the petition. If the fee has not already been submitted, the petitioner will have 30 days to file its regulatory fee in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30 day period.

James L. Oyster

R&O, *In re Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346, at ¶ 35 (Jun 8, 1994). Later in response to requests for clarification, we explained:

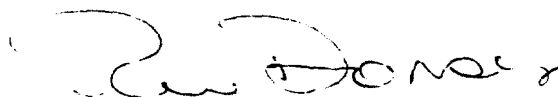
We will grant waivers of the fees on a sufficient showing of financial hardship. Mere allegations or documentation of financial loss, standing alone, will not support a waiver request. Rather we will grant a waiver only when the impact of the regulatory fee will affect a regulatee's ability to serve the public. It will be incumbent upon each regulatee to fully document its financial position and show it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.

Memorandum Opinion and Order, *In re Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, at ¶ 13 (Jun 22, 1995).

We reviewed the copy of the balance sheet dated December 31, 1998 against the standard. We also compared that balance sheet with the balance sheet furnished in support of a petition to waive payment of the regulatory fee for FY 1999. We observe that the entries on both balance sheets are identical and without explanation. We find that the documentation fails to support a compelling case of financial hardship. Moreover, you did not demonstrate that paying the regulatory fee would affect the ability of the station to maintain service to the public. Finally, you did not demonstrate how waiver of the fee in this case overrides the public's interest to collect the fee. Because you did not pay the fee with the petition for relief, and the period for deferral has passed, the fee for fiscal year 1998, \$1,250, is due within 30 days of the date of this letter. Failure to make timely payment may result in interest, additional penalties, and administrative costs for collection as permitted by 31 U.S.C. §3717 and 47 CFR 1.1940.

If you have any questions concerning this letter, please call the Revenue and Receivable Operation Group at (202) 418-1995.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Reger", with a stylized flourish at the end.

Mark Reger  
Chief Financial Officer



FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF GENERAL COUNSEL

## *memorandum*

TO: Tom Putnam, OMD  
Mark Reger, CFO

FROM: Paul K. Cascio, OGC

SUBJECT: Request for Waiver (Section 9, Regulatory Fee), V.I. Stereo Communications Corp., WVIS (FM), Chistiansted, St. Croix, U.S.V.I., Fee Control Numbers 00000CDMC-99-009; 00000CDMC-99-019

DATE: April 10, 2001

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James L. Oyster, counsel for V.I. Stereo Communications Corp., wrote on August 12, 1999 and again on September 9, 1999, requesting that the Commission grant waivers for FY 1998 and FY 1999 on the basis of financial hardship. In the first letter, he asks that the Commission reconsider its decision to deny a waiver of the regulatory fee for FY 1998, \$1,250. In the second letter, he asks that the Commission defer the FY 1999 regulatory fee, \$1,350, until the station is reestablished at its new location in Puerto Rico, and that it waive the fee entirely because of economic hardship. We combined the requests in this discussion because of the similarities in presentation and supporting evidence. We recommend denying both requests.

As a procedural matter, the request for waiver of the FY 1999 fee was addressed to the Managing Director; however, Mr. Oyster did not submit a completed FCC Form 159. The Commission may waive a regulatory fee "in any specific instance for good cause shown, where such action would promote the public interest." 47 USC 159(d); 47 CFR §1.1166. "Petitions for waiver of a regulatory fee must be accompanied by the required fee and FCC Form 159. . . . Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship" (emphasis added). 47 CFR §1.1166(c).

### The Standard

We are considering three matters. First, petitioner requests that we reconsider the waiver of the FY 1998 regulatory fee. Second, he asks the Commission to defer the FY 1999 regulatory fee "until such time as the station can be reestablished." Finally, he seeks waiver of the FY 1999

regulatory fee for economic hardship. The standard applies to all three requests; however, because the Commission's rules limit the time of deferral for a period of six months following the date that the fee is initially due, that portion of the request is now moot.

The Commission's authority to waive fees is narrowly defined (*See Conference Report, H.R. Rep. No. 453, 99<sup>th</sup> Cong., 1<sup>st</sup> Sess. 423*), and it rests upon an established standard with two elements: whether an extraordinary or compelling reason has been demonstrated and would the waiver of the fee override the public interest to collect the fee. The petitioner is required to furnish evidence appropriate to the standard to sustain the request for deferral and the requested relief from payment. The Commission provided the following guidance in 1994:

Petitioners seeking a waiver, deferral or reduction of a regulatory fee based on financial hardship may submit any relevant information in support of their request. We will review the supporting documents and base our ruling upon information submitted and any additional information available in our records. If petitioner presents a compelling case of financial hardship, no payment of the regulatory fee will be due. If the supporting materials do not present sufficient evidence of hardship, we will deny the petition. If the fee has not already been submitted, the petitioner will have 30 days to file its regulatory fee in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30 day period.

R&O, *In re Implementation of Section 9 of the Communications Act*, 9 FCC Rcd 5333, 5346, at ¶ 35 (Jun 8, 1994). Later, in response to requests for clarification and on reconsideration, the Commission added:

We will grant waivers of the fees on a sufficient showing of financial hardship. Mere allegations or documentation of financial loss, standing alone, will not support a waiver request. *Rather we will grant a waiver only when the impact of the regulatory fee will affect a regulatee's ability to serve the public. It will be incumbent upon each regulatee to fully document its financial position and show it lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.* In order to establish a basis for waiver predicated on financial need, regulatees who do not initially submit an adequate showing of financial hardship, may be asked to provide information such as a balance sheet and profit and lost statement (audited, if available), a cash flow projection for the next twelve months (with explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other officers, and the amount of their compensation, or similar information.

Emphasis added. MO&O, *In re Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, at ¶ 13 (Jun 22, 1995).

### Petitioner's submissions

On August 12, 1999, Mr. Oyster offered the "balance sheet for 1998" for radio station WVIS to supplement an earlier request that the Commission dismissed,<sup>1</sup> and added the following points in explanation: Mr. Bahr is the sole principal; he loaned \$106,971 to the corporation; the station "received only nominal income;" and Mr. Bahr received no salary. Moreover, the station is not viable at its present location because it is broadcasting only to avoid the loss of its permit. Later, on September 9, 1999, Mr. Oyster filed a Petition to Defer And/Or Waive Annual Regulatory Fee<sup>2</sup> intended to address the fees for FY 1999. Alleging "extreme hardship," Mr. Oyster attached a balance sheet purporting to address the period from January 1, 1999 to July 31, 1999, and a so-called profit and loss exhibit for the same period with income of \$4,200 and salary expenses of \$4,200. He offered the same explanation as to why WVIS is broadcasting from St. Croix, and he asserted the same matters presented in the supplementation, *e.g.*, a single corporate officer, significant corporate debt, insignificant corporate income. He described WVIS as a so-called "lame duck" facility under orders to move from St. Croix, U.S.V.I. to Vieques, P.R.

### Discussion

#### *FY 1998*

The balance sheet labeled December 31, 1998, which Mr. Oyster submitted as supplemental information, demonstrates the asset to debt current ratio is 1.96.<sup>3</sup> Although a ratio of income to current debt of 2:1 may be preferable, the computed ratio does not reflect a company in extreme financial hardship. Mr. Oyster did not include a copy of the company's profit and loss statement or its cash flow projection, and he did not offer any explanation why a corporate loan (\$106,971) is carried as a current liability. We conclude that the information submitted did not reach the required level of proof, *e.g.*,

[a] balance sheet and profit and lost statement (audited, if available), a cash flow projection for the next twelve months (with explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other officers, and the amount of their compensation, or similar information.

MO&O, *In re Implementation of Section 9 of the Communications Act*, 10 FCC Rcd 12759, at ¶ 13 (Jun 22, 1995).

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<sup>1</sup> *Fee Decisions of the Managing Director Available to the Public*, 13 FCC Rcd 20,237, DA 98-2009, rel. Oct 9, 1998.

<sup>2</sup> Mr. Oyster's Petition was premature. Regulatees were instructed to file "**during the period beginning September 13, 1999, and ending September 22, 1999**" (emphasis in original)." PN, FY 1999 Mass Media Regulatory Fees, August 2, 1999.

<sup>3</sup> Although the Balance Sheet includes an entry, "Loan Officer's (Joseph Bahr)" of \$106,971 as a current liability, this appears to be an incorrect entry. Because there is no explanation of the terms or conditions of the debt and no indication that the debt is payable within the year, we believe it was incorrectly inserted as a current liability. Moreover, petitioner carried the exact entry into the material supporting the request to waive the FY 1999 regulatory fee, and thereby raised additional suspicion as to its accuracy. Thus, the liability was not included as a value within the current liability.

Because petitioner failed to present appropriate documentation, the request for relief on reconsideration should be denied. Even so, Mr. Oyster's theorizing of the root cause, the lame duck status of the station, understates the fact that the station owner-operator, Mr. Bahr, petitioned the Commission to change the community of license of WVIS from Christiansted to Vieques.<sup>4</sup> The facts do not support the inference that the WVIS is being compelled to move.

*FY 1999*

Mr. Oyster alleges financial hardship as the basis for relief from the regulatory fees for FY 1999. In support of that request, he submitted a second balance sheet that has information identical<sup>5</sup> to the one enclosed in support of reconsideration. Mr. Oyster also included a profit and loss sheet for the period from January 1, 1999 to July 31, 1999 that shows income of \$4,200, salaries of \$4,200 and \$0 for the profit and loss line. To bolster his claim of extreme economic hardship, Mr. Oyster stresses three points: the anticipated station move; an assertion that "St. Croix has been hit hard by hurricanes over the past several years, which have led to a downward economic spiral, whereby the local government can barely meet payroll;" and the argument that the hurricane damaged much of the equipment.

To the extent any balance sheet is the financial statement reflecting the company's financial position as of a fixed date, petitioner's submission is ineffective. Whether by inadvertence or design, petitioner submitted duplicate information. Therefore, we are constrained to conclude from the exact duplication of information that one or both of the balance sheets are incorrect. The result taints both, and leaves petitioner short of achieving his burden to show financial hardship.

Turning to Mr. Oyster's additional claims, we find his unsupported generalizations provide only slight, if any, support. In particular, information in the profit and loss appears inconsistent with information in the balance sheet. Moreover, without more, anecdotal information about hurricanes "over the past several years" is not relevant to the financial situation of the station. Additionally, we will not speculate as to the timetable to accomplish the move from St. Croix to Vieques or the reasons for the any delay except to note that absence of support for the arguments in favor of the petition. Finally, the information does not meet our standard to show that relief from payment of the fee will promote the public interest. If the applicant does provide evidence to meet the standard, the Commission should not strain to find a basis out of the paucity of the submission.

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<sup>4</sup> Rules and Regulations, Federal Communications Commission, Radio Broadcasting Services; Canovanas, Culebra, Las Piedras, Mayaguez, Quebradillas, San Juan, and Vieques, PR, Christiansted and Frederiksted, VI, 60 FR 33144 ("at the request of V.I. Stereo Communications Corp., the Commission reallots Channel 291B from Christiansted, V.I. to Vieques, PR, and modifies the license of Station WVIS to specify Vieques as its community of license, . . . ), see Rules and Regulations, Federal Communications Commission, Radio Broadcasting Services; Culebra and Vieques, PR, Christiansted, VI, 56 FR 44010, Sep 6, 1991; cf. *In re Amendment of Section 73.202(B), Table of Allotments*, MM Doc 91-259, 1999 WL 409511 (F.C.C.), rel Jun 21, 1999.

<sup>5</sup> The data is the same, including reference to "superavit year 1993 (sic)" and "lost year 1994," and consistency in the values for each entry even though the information pertains to different years.

### *Deferral from payment*

Three related matters concerning the request for deferral bear brief comment. Mr. Oyster requested deferment of the FY 1999 regulatory fee for an unspecified period until the station can be "reestablished at its new location in Vieques." Because Mr. Oyster did not submit the required FCC Form 159, and he submitted a duplicate of the FY 1998 evidence in support of his claim for financial hardship for FY 1999, the request could have been dismissed on procedural grounds.<sup>6</sup> Moreover, because a deferment<sup>7</sup> is limited to a specific time, the period would have otherwise expired six months after the fee was payable, or during March 2000. However, because we *de facto* granted deferment during the processing of this request, dismissal would be procedurally ineffective. In any event, the fee is due immediately.

### Recommendations

After evaluating petitioner's requests and documents, we conclude he failed to carry his burden in either situation. On the information provided, we conclude that payment of the regulatory fee will have less of an impact on operations than any other operating expense, and that waiver of the fees for either FY 1998 or FY 1999 will not serve the public interest. Accordingly, we recommend denying both requests.

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<sup>6</sup> 47 CFR §1.116(c). "Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship." Mr. Oyster's submission for FY 1999 is sufficiently suspect as to be tantamount to no supporting documentation.

<sup>7</sup> 47 CFR §1.1166(b), "[d]eferrals of fees will be granted for a period of six months following the date the fee is initially due."